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8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION**

11 ROBERT PRITIKIN, et al.,
 12 Plaintiffs,
 13 v.

14 COMERICA BANK, et al.,
 15 Defendants.

CASE NO. CV 09-03303 JF

**COMERICA'S RESPONSE TO
 PLAINTIFFS' OBJECTION TO THE
 REQUEST FOR JUDICIAL NOTICE**

Date: October 30, 2009
 Time: 9:00 a.m.
 Dept.: Honorable Jeremy Fogel

17 Plaintiffs' Objection to Comerica's Request for Judicial Notice does not attack the
 18 procedural or substantive adequacy of the request or the exhibits thereto. Plaintiffs do not argue
 19 that any of the exhibits are not properly the subject of judicial notice under Federal Rule of
 20 Evidence 201, or that the Court is not entitled to take judicial notice of them. Rather, Plaintiffs
 21 object to the relevance of those records. As explained below, and for the reasons set forth in
 22 Comerica's moving papers and Reply brief, the exhibits to the Request for Judicial Notice
 23 ("RJN") are highly relevant to several critical issues in this case, including the question of when
 24 Plaintiffs' should have suspected that their Four Star losses had been caused wrongdoing, and
 25 whether Plaintiffs exercised reasonable diligence in pursuing their claims. Among other things, the
 26 court records attached to the RJN establish the existence of publicly-available information
 27 regarding the Four Star scheme, what other investors in Four Star did in order to investigate and
 28 pursue their claims for losses arising out of the Four Star scheme, and what some of the Plaintiffs

1 *in this case* did in order to investigate and pursue those same claims. They also demonstrate the
 2 ability of Plaintiffs and other Four Star investors to file a complaint with “Doe” defendants in
 3 order to preserve their ability to identify additional parties allegedly responsible for their losses,
 4 and add them as defendants to an existing lawsuit.

5 Simply put, plaintiffs rely upon a variety of state and federal doctrines, including the
 6 discovery rule, equitable tolling, and equitable estoppel, to justify the fact that they filed their
 7 complaint over six years after they suffered financial losses resulting from the collapse of Four
 8 Star in October 2002. *See*, Opp. at Sections IV.A, B, C. and D. All of those doctrines require
 9 Plaintiffs to establish either that they did not have notice or information of circumstances to put a
 10 reasonable person on inquiry of wrongdoing, or that they were unable to discover the wrongdoing
 11 despite reasonable diligence. *See*, P&A ISO Mtn. to Dismiss, at Sections V.A(1)-(3), B(1)-(2);
 12 Reply Brief, at Sections II.A, B, C, and D, which are incorporated herein by reference. Indeed,
 13 Plaintiffs have actually alleged in the Complaint that “there were no publicly available documents
 14 which Plaintiffs could have accessed in the exercise of reasonably diligence” that would have
 15 disclosed the Banking Scheme or Comerica’s role in it. Complaint, ¶ 56. The documents
 16 attached to the RJN are directly relevant to those issues and to Plaintiffs’ allegations and
 17 arguments regarding discovery, diligence, and publicly available documents.

18 Plaintiffs’ objections to the RJN should be overruled.

19 DATED: October 16, 2009

BUCHALTER NEMER
 A Professional Corporation

21 By: /s/ Richard C. Darwin
 22 RICHARD C. DARWIN
 23 Attorneys for Defendant
 24 COMERICA BANK
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